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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,369	10/17/2001	David Hatch	070-0105B	8566
7590 12/03/2003				
DiPinto & Shimokaji, P.C. Suite 480 1301 Dove Street Newport Beach, CA 92660			EXAMINER MATHEW, FENN C	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,369

Applicant(s)

HATCH, DAVID

Examiner

Fenn C Mathew

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 11-13, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 11, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 6, 12 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II in Paper No. 10 is acknowledged.

Claim Objections

1. Claim 13 is objected to because of the following informalities: Claim 13 depends on cancelled claim 9. Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims rejected under 35 U.S.C. 102(b) as being anticipated by Niv (U.S. 6,110,080). Referring to claim 1, Niv discloses a neck exercising apparatus comprising a cap-like device (12) having an outer surface (44) with a plurality of attachment members (52) (cap-like device taken as the combination of headpiece and a first cover member), and at least one weight (col. 4, lines 35-40) having a surface including a plurality of attachment members (54) compatible with the outer surface attachment

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members, whereby confronting attachment members on the at least one weight and the cap-like device serve to releasably fasten the at least one weight to the cap-like device.

3. Referring to claim 2-3, Niv discloses the attachment members including hook and pile fasteners (col. 4, lines 58-59, furthermore, the term VELCRO is synonymous with hook and loop type fasteners).

4. Referring to claim 4, Niv discloses a plurality of separate weights, each having a surface including a plurality of attachment members, that are releasably fastened to selected portions of the outer surface of the cap-like device.

5. Referring to claim 18, Niv discloses a method comprising the steps of positioning a cap-like device having attachment members on its outer surface so as to cover a user's hair and scalp, and placing a number of separate weights having attachment members in contact with various areas on the cap-like device to fasten the weights to the device.

6. Claims 1, 5, 7, 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Brannon (U.S. 6,170,087). Referring to claim 1, Brannon teaches in fig. 2, a cap-like device (28) having an outer surface including attachment members (34) and a weight having a plurality of attachment members compatible with the outer surface attachment members, whereby the weight can be releasably fastened to the outer surface attachment members.

7. Referring to claim 5, Brannon provides a provision for using pocket members with a belt (col. 10, lines 12-16), whereby the pockets are attached to fastening members located on the inner brim of the cap-like device.

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8. Referring to claim 7, Brannon discloses that weights (Brannon discloses various items may be placed inside pockets) are disposed in the plurality of pockets.

9. Referring to claim 11, Brannon discloses a cap-like device having hook and pile fasteners on an outer surface, at least one weight having a surface including a plurality of hook and pile attachment members, and a weight belt and at least one additional weight supported on the cap-like device, the weight belt including a plurality of pockets holding the additional weight.

10. Referring to claims 18-19, Brannon has disclosed the claimed structure, and the claimed method steps occur as the Brannon device is used.

Allowable Subject Matter

11. Claims 6 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Foresman	U.S. 5,046,193
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Moss	U.S. 4,632,389
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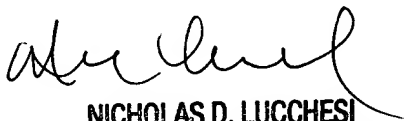
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Meranto	U.S. 6,200,243
Turner	U.S. 4,765,338
Griffin	U.S. 6,554,787
Boersma	U.S. 5,102,024
Burton	U.S. 5,438,698
Shifrin	U.S. RE 35,193

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
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November 29, 2003